

Appl. No.: 09/858,415  
Amdt. dated: 9/30/2005  
Reply to Office Action of June 30, 2005

### **REMARKS**

Upon entry of the instant amendment, claims 1-6 are pending. A Declaration under Rule 37 CFR § 1.131 is enclosed which illustrates an effective date of the application at least as early as March 16, 2001. It is respectfully submitted that upon entry of the Declaration, the application is in condition for allowance.

### **CLAIM REJECTIONS – 35 U.S.C. § 102**

Claims 1-2 and 5-6 have been rejected under 35 U.S.C. § 102(e) as being unpatentable over Ross et al., U.S. Published Patent Application US 2002/0132616 A1. ("Ross, et al.") The Ross et al. reference has an effective date of March 19, 2001. As demonstrated by the enclosed Declaration under 37 CFR § 1.131, the earliest effective date of the above-identified application is March 16, 2001. Thus, it is respectfully submitted that the Ross, et al. publication is not a reference. As such, the rejection under 35 U.S.C. § 102(e) is obviated.

### **CLAIM REJECTIONS – 35 U.S.C. § 103**

Claims 3-4 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Ross. As mentioned above, the Ross, et al. publication is no longer a reference. As such, the rejection under 35 U.S.C. § 103(a) is obviated.

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Respectfully submitted,

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